

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16171
[REDACTED]	)	
	)	DECISION
Petitioners.	)	
_____	)	

On December 11, 2001, the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] and [Redacted] (petitioners), denying part of the petitioners' request for refund for the taxable year 2000. [Redacted] (the husband) filed an amended Idaho income tax return seeking a refund of tax totaling \$1,404. The petitioners filed a timely protest and petition for redetermination. The Tax Commission, having reviewed the file, hereby issues its decision.

General Facts

On May 29, 2001, the Tax Commission received an amended Idaho income tax return for taxable year 2000. The amended Idaho return reflected a filing status of married filing separate and contained a statement that the amended return was being filed since the husband "Was Full Time Military For The First 4 Months Of The Year Stationed Out Of State." The original Idaho income tax return and the federal income tax return were filed as married filing joint. It does not appear that an attempt was made to amend their federal income tax return from married filing joint to married filing separate. The amended Idaho income tax return was filed to claim a deduction for compensation paid by the Armed Forces for services performed outside of Idaho.

Upon receipt of the amended Idaho income tax return, the Tax Commission's Revenue Operations Division (RO) corrected the petitioners' amended return to reflect a married filing joint status and to disallow the majority of the deduction that was being claimed as compensation for military service performed outside of Idaho. Based upon information provided by the

husband to RO, RO disallowed \$15,333 of the \$20,144 claimed as a deduction for military service performed outside of Idaho, which resulted in the issuance of a “Correction Notice” by the Tax Commission that reflected a refund of \$388.

On December 5, 2001, the husband sent a letter to the Tax Commission protesting the “Tax Commission’s refusal to refund tax I paid on \$15,333.00 . . . . The \$15,333.00 was income that I earned while on active duty military status while stationed at Fort Lewis, Washington full time.”

On December 11, 2001, RO issued a NODD to the petitioners and the file was then forwarded to Legal/Tax Policy for resolution.

#### Filing Status

Idaho Code section 63-3002 provides:

**Declaration of intent.** It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; . . .

The intent of the Idaho Legislature is to follow the federal determination of income subject only to modifications contained in Idaho law. Accordingly, the filing status used to determine the petitioners’ federal taxable income is required to be used in determining the petitioners Idaho taxable income. Taxpayers are entitled to switch from joint to married filing separate provided, however, that the switch to a separate return is made prior to the due date of the return. Once the due date of the return has passed, as in the case currently before the Tax Commission, the spouses cannot switch from a joint return to a married filing separate return. Treas. Reg. 1.6013-1(a).

### Military Compensation

Idaho Code section 63-3022(h) states:

(h) In the case of an individual who is on active duty as a full-time officer, enlistee or draftee, with the armed forces of the United States, which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more, deduct compensation paid by the armed forces of the United States for services performed outside this state. The deduction is allowed only to the extent such income is included in taxable income, and provided that appropriate adjustments shall be made in determining the deductions and exemptions allowed pursuant to section 63-3026A(4), Idaho Code.

As previously mentioned, RO denied \$15,333 of petitioners' deduction for compensation for military service performed outside of Idaho. Based upon additional information and a review of applicable Idaho and federal income laws, the Tax Commission finds that the petitioners are entitled to deduct, in accordance with Idaho Code section 63-3022(h), the additional \$15,333 as compensation paid by the Armed Forces for services performed outside of Idaho.

WHEREFORE, the Notice of Deficiency Determination dated December 11, 2001, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners are entitled to the following refund of tax and interest:

<u>YEAR</u>	<u>TAX REFUND</u>	<u>INTEREST</u>	<u>TOTAL REFUND</u>
2000	\$1,244.00	\$136.00	\$1,380.00

Interest is calculated through September 30, 2002.

An explanation of the petitioners' rights to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2002.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No. [Redacted]  
\_\_\_\_\_